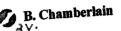
2010 JUL 26 PM 4: 40 v

-ALAE HICKS, CLERK



## YAVAPAI COUNTY ATTORNEY'S OFFICE JEFFREY PAUPORE, SBN 007769 **DEPUTY COUNTY ATTORNEY** 255 East Gurley Street

Prescott, AZ 86301

Telephone: 928-771-3344 ycao@co.yavapai.az.us

6

1

2

3

7

8

12

13

17

18

19

20

21

22 23

24

25

26

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

MOTION TO DELAY TRIAL BASED **UPON DEFENDANT'S MEMORANDUM DATED JULY 26, 2010** 

Honorable Warren Darrow Division 6

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby requests the jury trial be delayed unless this court, on July 27<sup>th</sup>, 2010 summarily dismisses defendant's pleading filed on July 26, 2010 titled Bench Memorandum on Prior Rulings Regarding Testimony of Kennedy, Mascher & Winslow.

## MEMORANDUM IN SUPPORT OF THIS MOTION

The defense team was sent at list of the State's forthcoming witnesses a least a week in advance of their anticipated testimony. The defense was notified on July 9th that Det. Kennedy would be testifying as early as July 15, 2010. The Defense had sufficient notice to file a motion to clarify/reconsideration the scope of her testimony as requested by this court before trial resumed on July 21, 2010.

## Office of the Yavapai County Attorney 255 E. Gurley Street, Suite 300 Prescott, AZ 86301 Phone: (928) 771-3344 Facsimile: (928) 771-3110

On July 22, 2010, the defense began arguing the scope of Det. Kennedy's testimony, in chambers, during a discussion of pending jury questions. The defense also argued the scope of Det. Winslow and Commander Masher's testimony. This court stated the scope of Det. Kennedy's testimony which was consistent with prior rulings.

The in chambers bombardment was no accident. The defense team was ready and had in hand court transcripts from Judge Lindberg's hearings which the defense said occurred on April 10 and April 28, 2010. The April 28<sup>th</sup> transcript is over 200 pages long. The State is still trying to verify if there is a transcript dated April 10<sup>th</sup>, 2010. Defense counsel, taking Judge Lindberg words out of context, pressed this court to rule in their favor. They chose the moment to ambush the State and the court, right in the middle of an informal discussion of jury questions. The planned assault was done without notice to the court and the State and lacked professionalism.

The next day, in front of the jury, counsel for the defense repeatedly interrupted the prosecutor during his direct examination of Det. Kennedy on matters Judge Lindberg and this court previously approved. Trial for the day was cut short and the defense again re-argued the scope of Det. Kennedy's testimony.

Now, hours before trial is to begin the defense filed a 15 page memorandum which is a thinly veiled motion for reconsideration. It was delivered to the County Attorney's mail box at the court house so the prosecutors did not receive a copy until after lunch on July 26, 2010. Previously, the defense has emailed every pleading to the State but in this case chose not to.

This pleading should be stricken for exceeding the maximum page limit without court approval. Not expecting that will happen, the State does not have time to respond to this pleading before the start of trial tomorrow morning.

## Office of the Yavapai County Attorney 255 E. Gurley Street, Suite 300

1

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

23

Facsimile: (928) 771-3110

Phone: (928) 771-3344

If this court is going to allow argument on defendant's memorandum/motion for reconsideration, the State needs a reasonable amount of time to respond. The defendant, on page 2 of his memorandum agrees, this issue must be resolved before Det. Kennedy can resume her testimony and that means the trial will have to be delayed.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of July, 2010.

Sheila Sullivan Polk YAVAPAI ÇOUNTY ATTORNEY

By: Jeffrey Paupor

Deputy County Attorney

COPIES of the foregoing delivered this 26th day of July, 2010 to:

Honorable Warren Darrow

Division 6

Yavapai County Superior Court

(via email)

John Sears

511 E.. Gurley St.

21 Prescott, AZ 86301

Attorney for Defendant

22 (via email)

24 Larry Hammond

Anne Chapman

25 Osborn Maledon, P.A.

2929 North Central Ave, 21st Floor

26 | Phoenix, AZ

Attorney for Defendant

By R. Ambb